

WOOD CRAPO LLC
Mary Anne Q. Wood (#3539)
500 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 366-6060

Attorneys for Defendant

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SALT LAKE CITY, UTAH
366-6060

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

LYDIA M. ROLL,)	
)	
Plaintiff,)	KMART CORPORATION'S
)	ANSWER TO AMENDED
v.)	COMPLAINT AND JURY DEMAND
)	
KMART CORPORATION, a Delaware)	Case No. 2:04CV01174DB
corporation; PALMER REIFLER &)	
ASSOCIATES, PA, a Florida company,)	Judge Dee Benson
)	
Defendants.)	

Defendant Kmart Corporation ("Kmart") answers the enumerated allegations of Plaintiff's Amended Complaint and Jury Demand as follows:

1. Admits on information and belief.
2. Admits.
3. Denies for lack of information.
4. Admits as to jurisdiction over Kmart..
5. States that the Amended Complaint speaks for itself and no response is required, and otherwise denies the remaining allegations of paragraph 5.
6. Admits.

✓

7. Admits.
8. Denies for lack of information.
9. Denies for lack of information.
10. Denies for lack of information.
11. Denies for lack of information.
12. Denies for lack of information.
13. Denies for lack of information.
14. Admits that Plaintiff was terminated for misappropriation of company property and otherwise denies the remaining allegations of paragraph 14 of Plaintiff's Amended Complaint.
15. Admits that Plaintiff misappropriated Kmart property and otherwise denies the remaining allegations of paragraph 15 of Plaintiff's Amended Complaint.
16. Denies that an exhibit was attached to the Amended Complaint and denies the remaining allegations of paragraph 16 for lack of information.
17. Denies for lack of information.
18. Kmart incorporates its responses to paragraphs 1 through 17 above.
19. Denies.
20. Denies.
21. Denies.
22. Denies.
23. Denies.
24. Denies.

25. Kmart incorporates its responses to paragraphs 1 through 24 above.

26. States that paragraph 26 calls for a legal conclusion and no response is required, and otherwise denies the remaining allegations of paragraph 26 of Plaintiff's Amended Complaint.

27. Denies.

28. Denies.

29. Kmart incorporates its responses to paragraphs 1 through 28 above.

30. Denies for lack of information.

31. Denies for lack of information.

32. Denies for lack of information.

33. Denies for lack of information.

34. States that paragraph 34 calls for a legal conclusion and no response is required, and otherwise denies the remaining allegations of paragraph 34 of Plaintiff's Amended Complaint for lack of information.

35. Denies for lack of information.

36. Denies for lack of information.

37. Denies for lack of information.

38. Denies for lack of information.

39. Denies for lack of information.

40. Denies.

41. Denies for lack of information.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted against Kmart.

SECOND AFFIRMATIVE DEFENSE

Some of Plaintiff's claims are barred by the exclusive remedy provisions of the Utah Workers Compensation Statute.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to plead the elements of slander with particularity.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate her damages.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Any statements made by Kmart concerning Plaintiff were privileged under Utah law.

SEVENTH AFFIRMATIVE DEFENSE

Kmart has no liability to Plaintiff under the Fair Debt Collection Practices Act.

EIGHTH AFFIRMATIVE DEFENSE

Alternatively, Kmart's actions were privileged under the Fair Debt Collection Practices Act and Utah law.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are brought in bad faith and are subject to sanction under the applicable provisions of Utah and Federal law and Rule 11 of the Federal Rules of Civil Procedure.

TENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to a jury trial on some or all of her claims.

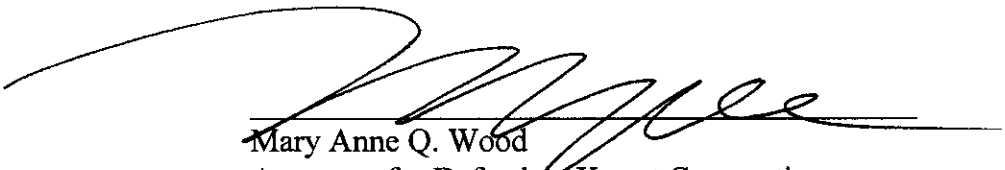
ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff fails to meet the standard which would entitle her to punitive damages.

WHEREFORE, Kmart, having answered Plaintiff's Amended Complaint, requests that the Amended Complaint be dismissed with prejudice, that Plaintiff take nothing thereby, and that Kmart be awarded its attorney's fees and the costs of suit, together with such other relief as the Court shall deem just and proper.

DATED this 28th day of December, 2004.

WOOD CRAPO LLC



Mary Anne Q. Wood
Attorneys for Defendant Kmart Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of December, 2004, a true and correct copy of the foregoing ***ANSWER TO AMENDED COMPLAINT AND JURY DEMAND*** was mailed in the U.S. Mail, postage prepaid, to:

Gregory B. Smith, Esq.
180 South 300 West, #170
Salt Lake City, UT 84101

A handwritten signature in black ink, appearing to read 'G. B. Smith', is written over a horizontal line.

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